

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA

- v -

Criminal Case No. 21-0080 (NGG)

DOUGLASS MACKEY,

Defendant.

----- x

Douglass Mackey's Proposed Jury Instructions

Andrew J. Frisch
The Law Offices of Andrew J. Frisch, PLLC
40 Fulton Street, 17th Floor
New York, New York 10038
(212) 285-8000
afrisch@andrewfrisch.com

Attorney for Douglass Mackey

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA

- v -

Criminal Case No. 21-0080 (NGG)

DOUGLASS MACKEY,

Defendant.

----- x

Douglass Mackey's Proposed Jury Instructions

Indictment

Mr. Mackey requests that the Court read the Indictment to the jury as filed and use all four verbs, "to injure, threaten, oppress and intimidate."

Conspiracy to Violate Rights

In addition to the Court's standard charges on conspiracy and intent, Mr. Mackey requests that jury be instructed that "the words 'injure, oppress, threaten, or intimidate' mean conduct intended to harm, frighten, prevent, inhibit, or punish the free actions of other persons in the exercise and enjoyment of a right and privilege secured to them by the Constitution and laws of the United States, to wit: the right to vote. To threaten or oppress does not require the possibility of physical force or physical harm." LexisNexis® Forms FORM 485-17-34.

We request that the jury be instructed as the indictment charged Mr. Mackey because the four verbs inform the proper meaning of "injure."

Venue

The indictment in this case alleges that an act in furtherance of the charged offense charged occurred here in the Eastern District of New York. The Eastern District of New York consists of Kings County (Brooklyn), Queens, Nassau, and Suffolk Counties, and Staten Island. There is no requirement that all aspects of the charged or the entire conspiracy take place in the Eastern District of New York. But for you to return a guilty verdict, the government must convince you that an act in furtherance of the charged took place in the Eastern District of New York.

I will now instruct you on the law on venue. “[T]he government must prosecute an offense in a district where the offense was committed.” Fed. R. Cr. Pro. 18. The *locus delicti*, meaning the place where the crime was committed [Black’s Law Dictionary 1025 (9th ed., 2009)], “must be determined from the nature of the crime alleged and the location of the act or acts constituting it.” *United States v. Cabrales*, 524 U.S. 1, 7 (1998) *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 (1999). “[A]ny offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.” 18 U.S.C. § 3237(a). Venue for a charge of conspiracy is proper “in any district in which an overt act in furtherance of the conspiracy was committed.” *United States v. Kloszewski*, 760 F. App’x 12, 15 (2d Cir. 2019) (quoting *United States v. Lange*, 834 F.3d 58, 69 (2d Cir. 2016). “[V]enue is proper in a district where (1) the defendant intentionally or knowingly causes an act in furtherance of the charged offense to occur in the district of venue; or (2) it is foreseeable that such an act would occur in the district of venue [and it does].” *United States v. Royer*, 549 F.3d

886, 894 (2d Cir. 2008) (quoting *United States v. Svoboda*, 347 F.3d 471, 483 (2d Cir. 2003) (brackets in original)).

Unlike the elements of the charged crime that I have described, venue must be proved by a preponderance of the evidence. This means the government must prove that it is more likely than not that some act in furtherance of the crime charged or part of the conspiracy took place in the Eastern District of New York.

Dated: March 12, 2023

Andrew J. Frisch
The Law Offices of Andrew J. Frisch, PLLC
40 Fulton Street, 17th Floor
New York, New York 10038
(212) 285-8000
afrisch@andrewfrisch.com

Attorney for Douglass Mackey